

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
RCC Holdings, Inc.)	
)	
Petition for Designation as)	
Eligible Telecommunications Carrier)	
Throughout its Licensed Service Area)	
in the State of Alabama)	

COMMENTS

The Alabama Rural Local Exchange Carriers (“Alabama Rural LECs”) submit these Comments in response to the Supplement to Petition for Designation as an Eligible Telecommunications [Carrier] (“*Supplement*”) filed by RCC Holdings, Inc. (“RCC”) in response to the Commission’s *Virginia Cellular*¹ decision.

The Alabama Rural LECs note that said *Supplement* was filed during the initial round of filings submitted in response to the Commission’s April Public Notice inviting parties to update the record on pending petitions for ETC designation.² The Alabama Rural LECs would submit that as such the RCC *Supplement* was premature. According to the *April ETC Notice*, the initial round was for the “purpose of allowing parties to supplement their own petitions and

¹ *In re Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, FCC 03-338 (rel. Jan. 22, 2004) (“*Virginia Cellular*”).

² *Parties are Invited to Update the Record Pertaining to Pending Petitions for Eligible Telecommunications Carrier Designations*, Public Notice, CC Docket No. 96-45, DA 04-999 (rel. April 12, 2004) (“*April ETC Notice*”).

applications.”³ The list of related petitions and applications specifically enumerated by the Commission included the Pending Application for Review filed by the Alabama Rural LECs (“*Application for Review*”) on December 23, 2002; the list did not include the underlying Petition of RCC for designation as an ETC,⁴ making RCC’s *Supplement* untimely. Procedurally, RCC should now be responding to the previously filed Supplement of the Alabama Rural LECs to their *Application for Review* (“*LEC Supplement*”).⁵

While the Alabama Rural LECs maintain that the *Supplement* should be dismissed, they submit these Comments as if the *Supplement* were properly filed in an effort to conserve both time and resources. Moreover, recognizing the Commission’s compressed timeframe in this proceeding, the Alabama Rural LECs adopt and incorporate, as if set forth fully herein, their arguments and positions contained in the *LEC Supplement*.⁶ Finally, one week ago today, ALLTEL withdrew its Petition for ETC designation in rural areas of Alabama.⁷ This action

³ *April ETC Notice* at p. 2.

⁴ *RCC Holdings, Inc., Petition for Designation as an Eligible Telecommunications Carrier throughout its Licensed Service Area in the State of Alabama* (“*RCC Petition*”), CC Docket No. 96-45, Memorandum Opinion and Order, 17 FCC Rcd 23532 (“*RCC Order*”).

⁵ RCC, on the other hand, requests that the Commission dismiss the *LEC Supplement* as “untimely” because it was not filed within the 30-day period permitted for an Application for Review under Section 1.115(d) of the Commission’s Rules. RCC Motion to Dismiss, CC Docket No. 96-45 (May 19, 2004). RCC’s arguments in the Motion to Dismiss are inapposite because the *LEC Supplement* was not filed pursuant to Section 1.115(d). Instead, the *LEC Supplement* was filed in response to the Commission’s express invitation in the *April ETC Notice*. While the Alabama Rural LECs maintain that it is the *Supplement* that was untimely filed, they submit these Comments to the same.

⁶ Exhibit “A” attached hereto.

⁷ Letter from C. Tritt, counsel to ALLTEL Communications, Inc., to M. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45, DA Nos. 03-1881, 03-1882, 03-3824, 03-3825 and 04-999 (May 21, 2004), withdrawing *ALLTEL Communications, Inc.* (“ALLTEL”), *Petition for Designation as an Eligible*

(continued...)

underscores the volatility and uncertainty in the rural ETC designation arena. As a result of the *ALLTEL Withdrawal*, the Alabama Rural LECs provide a revised summary of the status of rural ETC proceedings in Alabama in Section III *infra*.

I. RCC DOES NOT MEET THE PUBLIC INTEREST CRITERIA SET FORTH IN VIRGINIA CELLULAR

Revisiting RCC's ETC designation (and request), as supplemented, under the public interest framework enunciated in *Virginia Cellular* the Commission must "weigh the benefits of increased competitive choice, the impact of the designation on the universal service fund, the unique advantages and disadvantages of the competitor's service offering, any commitments made regarding quality of telephone service, and the competitive ETC's ability to satisfy its obligation to serve the designated service areas within a reasonable time frame."⁸ RCC's assertion that it would be "procedurally infirm and unfair"⁹ to apply these new standards is made without any legal support and validates the position of the Alabama Rural LECs that it is unwise to issue further ETC designations (or to allow granted ones to stand) pending a resolution of the outstanding ETC issues raised in the *Recommended Decision*.¹⁰

The claims made in RCC's *Supplement* simply do not survive the more stringent public interest analysis now embraced by the Commission. While RCC initially relied on the

(continued...)

Telecommunications Carrier in the State of Alabama, (April 14, 2003) ("*ALLTEL Petition*") (the "*ALLTEL Withdrawal*").

⁸ *Virginia Cellular* at ¶ 28; see also *Highland Cellular* at ¶ 22.

⁹ *Supplement* at p. 2.

¹⁰ *Recommended Decision, Federal-State Joint Board on Universal Service Seeks Comment on Certain of The Commission's Rules Relating to High-Cost Universal Support and The ETC Designation Process*, CC Docket No. 96-45, FCC 04J-1 (rel. Feb. 27, 2004) ("*Recommended Decision*").

presumptive benefits of “competition and consumer benefit”¹¹ to support its contention that the public interest would be served by its ETC designation in certain rural service areas in Alabama, it has not – in its *Petition* or *Supplement*, provided the kinds of firm commitments required under *Virginia Cellular* and *Highland Cellular*. RCC makes no build-out or quality of services assurances in the nature of those made by Virginia Cellular or Highland Cellular. Moreover, RCC was and is competing for and winning customer lines without the benefit of high-cost support. Thus, efficiency gains inspired by long-term competition happened without the costs associated with the designation of additional ETCs.¹²

While RCC stated in its original filings that it “will implement ... E-911 services in compliance with all state and federal requirements”¹³, this does not rise to the level of commitment provided by Virginia Cellular. Virginia Cellular stated that “it is in compliance with state and federal 911 and E-911 mandates and is upgrading from analog to digital technology”, “it is implementing Phase I E-911 services in those areas where local governments have developed E-911 functionality” and “that upon designation as an ETC, it will be able to effectively implement E-911.”¹⁴ RCC does not make similar representations in its *Supplement*.

RCC also stated in its original filing that it “believ[ed]” that “its local calling area [would] be substantially larger [than the incumbent’s]”¹⁵ and that it would “implement a variety

¹¹ *RCC Petition* at p. 15.

¹² Alabama Rural LECs *ex parte*, CC Docket No. 96-45, DA No. 02-746, *RCC Petition* (October 2, 2002).

¹³ *RCC Petition* at p. 15.

¹⁴ *See Virginia Cellular* at ¶ 19.

¹⁵ *RCC Petition* at p. 15.

of service offerings and rate plans that will be competitive with incumbent service offerings.”¹⁶ It makes no additional firm commitments in its *Supplement*. Unlike Virginia Cellular, RCC does not assert that its “current rate plans include access to the local exchange network” or that it has “many plans [that] include a large volume of minutes.”¹⁷

Even with the filing of its *Supplement*, RCC fails to meet the more stringent public interest analysis in other areas. While RCC asserts in its *Supplement* that it is using Universal Service Fund (“USF” or the “Fund”) High Cost support to improve its wireless infrastructure for rural Alabama,¹⁸ RCC still does not provide a concrete commitment to serve sparsely populated areas. It provides no assurance of quality service to all portions of the designated study area. Moreover, RCC does not indicate that it has actually provisioned service to all requesting residential customers in rural Alabama or that it is providing service to any previously unserved rural areas in Alabama. Finally, RCC does not offer any concrete evidence that it has deployed services – advanced or otherwise, that result in “improved health and safety, mobility, wider local calling areas, competition or improved infrastructure”.¹⁹ RCC also states in its *Supplement* that it has planned construction for certain areas that are “particularly rural” and that lack “high-quality telecommunications providers”.²⁰ However, in spite of the Commission’s invitation to update the record on such matters, RCC offers no evidentiary support for its assertion that these

¹⁶ *Id.*

¹⁷ *See Virginia Cellular* at ¶ 20.

¹⁸ *Supplement* at p. 1.

¹⁹ *Id.* at p. 6.

²⁰ *Id.* at p. 11.

areas are without competition²¹ or without “high-quality” telecommunications service.²² Its Petition as supplemented remains deficient.

In addition, while RCC stated in its original Petition that it “will advertise the availability of the supported services and the corresponding charges in a manner that fully informs the general public”²³ it still does not make specific commitments to advertise USF-supported services in the same fashion that it advertises services not supported by the USF. In sum, RCC fails to concretely identify how it intends to alter its current construction, service or marketing plans to enable it to provide “universal service” in the rural service area[s] in which it seeks ETC designation.

“[T]he value of increased competition, by itself, is not sufficient to satisfy the public interest test in rural areas.”²⁴ Instead, the Commission balances the benefits and costs of ETC designation in a fact-specific exercise.²⁵ To date – even after filing its *Supplement*, RCC has not addressed the impact of the multiplicity of pending ETC Petitions in Alabama on the USF, a specific component of the more stringent public interest analysis.²⁶ The purported benefits of

²¹ *Contra* Reply Comments of Alabama Rural LECs to RCC’s Opposition to *Application for Review*, CC Docket No. 96-45, DA 02-3181 (Jan. 21, 2003) at p. 4, referencing Map that indicates Mobile Operator Coverage by County.

²² *Contra* Comments of Alabama Rural LECs to *RCC Petition*, CC Docket No. 96-45, DA No. 02-746 (May 23, 2002) at p. 3-4, discussing subscription percentages, availability of service to rural residences and lack of held orders for service.

²³ *RCC Petition* at p. 8.

²⁴ *Virginia Cellular* at ¶ 4.

²⁵ *Id.* at ¶ 28; see also *Highland Cellular* at ¶ 22.

²⁶ See *Virginia Cellular* at ¶ 4.

RCC's ETC designation must be weighed against very real costs associated with introducing multiple carriers in sparsely populated areas such as the ones affected by the *RCC Order*.

In summary, RCC has not – in either its original Petition or *Supplement*, demonstrated that the purported benefits of providing USF support to its competitive CMRS service offering in the wire centers for which it seeks ETC designation outweighs potential harms.²⁷ Failure to set aside the *RCC Order* could dilute the USF funding available to the affected Alabama Rural LECs and make it more difficult for individual companies to maintain the network necessary to serve their entire service area.

II. DESIGNATING RCC AS AN ETC IN A PORTION OF A RURAL TELEPHONE COMPANY'S WIRE CENTER IS NOT IN THE PUBLIC INTEREST

In *Highland Cellular* the Commission concluded that designating an ETC for only a portion of a rural telephone company's wire center was "inconsistent with the public interest".²⁸ In fact, the Commission cited the *RCC Order*.²⁹ Thus, *Highland Cellular* mandates that RCC's ETC designation for only a portion of Interstate Telephone Company's Shawmut wire center and Mon-Cre Telephone Cooperative, Inc.'s Lapine wire center be overturned. While RCC now indicates that it has the ability to serve the entire Shawmut wire center,³⁰ the existing partial designation cannot stand. Moreover, the Commission has clearly stated that a company's wire

²⁷ *Virginia Cellular* at ¶ 28.

²⁸ *Highland Cellular* at ¶ 33.

²⁹ *Id.*

³⁰ *Supplement* at p. 3-4.

center is the smallest acceptable area for ETC designation,³¹ making RCC's population density arguments concerning the Lapine wire center irrelevant.³²

III. CERTAIN CHANGES IN THE STATUS OF ETC PROCEEDINGS REFLECT CONTINUED UNCERTAINTY AND SUPPORT A DELAY IN ANY FURTHER RURAL ETC DESIGNATIONS

Currently, there are five ETC proceedings (two granted and three pending) in rural Alabama.³³ Since the LEC Supplement was filed, ALLTEL withdrew the bifurcated rural portion of its Alabama ETC designation petition.³⁴ Of the Alabama Rural LECs, the following now have at least two potential CETCs in some or all of their service areas: Castleberry Telephone Company, Inc., Frontier of Lamar County, Inc., Gulf Telephone Company, Inc., Hayneville Telephone Company, Inc. and Moundville Telephone Company, Inc.³⁵ These carriers all have three: Butler Telephone Company, Inc.,³⁶ Frontier of Alabama, Inc., Frontier of

³¹ *Highland Cellular* at ¶ 33, where the Commission concluded "that making designations for a portion of a rural telephone company's wire center would be inconsistent with the public interest".

³² *Supplement* at p. 4-5.

³³ *RCC Order; Cellular South Petition for Designation as an Eligible Telecommunications Carrier throughout its Licensed Service Area in the State of Alabama*, Memorandum Opinion and Order, 17 FCC Rcd 24393 ("CellSouth Petition" or "CellSouth Order"); *AT&T Wireless Services, Inc. ("AT&T Wireless") Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama*, (Dec. 31, 2003) ("AT&T Wireless Petition") as supplemented (May 11, 2004); *Corr Wireless Communications, LLC, Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama*, (May 13, 2003) ("Corr Petition") as supplemented (May 14, 2004); *Nextel Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama*, (April 4, 2003) ("Nextel Petition") as supplemented (March 24, 2004).

³⁴ *ALLTEL Withdrawal*.

³⁵ These numbers have been compiled by reviewing the *RCC Petition*, *AT&T Wireless Petition*, *Corr Petition*, *Nextel Petition* and *CellSouth Petition*. The *ALLTEL Petition* has been removed.

³⁶ But for the recent removal of Butler Telephone Company, Inc. from the *Corr Petition* and the withdrawal of the *ALLTEL Petition*, this carrier would have five potential CETCs. Supplement to *Corr Petition* at footnote numbered 2; *supra* at footnote numbered 7.

the South, Inc., Millry Telephone Company, Inc. and Mon-Cre Telephone Cooperative, Inc.³⁷ If all of the Alabama ETC petitions were granted or, in the case of the *RCC Order* and *Cell South Order*, were allowed to stand, the resulting CETCs in Alabama could draw millions of dollars annually from the USF.³⁸

The *Supplement* simply does not provide sufficient justification for upholding the *RCC Order*, which must be set aside until the Commission has resolved the outstanding ETC designation issues raised in the pending *Recommended Decision*. These proceedings will have a significant overall impact on the Fund.³⁹ Other wireless carriers, recognizing the uncertainty in rural designations, have voluntarily withdrawn their ETC designation requests, until the broader issues affecting the USF are resolved.⁴⁰ The Alabama Rural LECs respectfully assert that the Commission should similarly set aside and/or delay any pending ETC designations in rural areas to avoid any further confusion.

³⁷ See *RCC Petition*, *AT&T Wireless Petition*, *Corr Petition*, *Nextel Petition* and *CellSouth Petition*.

³⁸ RCC indicates that in a little over a year of ETC designation in Alabama it has received \$3.4M in high-cost support. *Supplement* at Exhibit A. CellSouth projects that it will receive approximately \$110,000 per year in support for Alabama. *CellSouth Petition Supplement* at p. 4 (May 14, 2004); Nextel expects to draw approximately \$700,000 annually from the USF based on its Alabama petition. Nextel's Alabama Supplement to *Nextel Petition* at p. 5, footnote numbered 14 (Mar. 24, 2004). Corr Wireless estimates that it will receive approximately \$.5M annually in support for Alabama rural areas. *Corr Petition Supplement* at p. 8 (May 14, 2004). AT&T Wireless estimates that it will receive \$1M annually in high-cost support in its requested Alabama ETC designation areas. Supplement to *AT&T Wireless Petition* at p. 5 (May 10, 2004). Using solely these supplied figures, annual draws of several million dollars from the Fund for the state of Alabama alone would be virtually assured.

³⁹ See, e.g., *Application for Review* at p. 2 and 13-16.

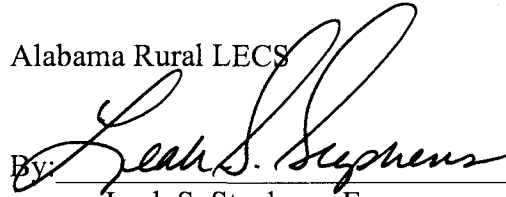
⁴⁰ See *ALLTEL Withdrawal*.

CONCLUSION

RCC still fails to make a sufficient showing that the public interest would be served by its designation as an ETC in rural areas of the state of Alabama. Moreover, RCC's ETC designation for only a portion of the Lapine wire center of Mon-Cre Telephone Cooperative, Inc. and a portion of the Shawmut wire center of Interstate Telephone Company is prohibited.

Respectfully submitted,

Alabama Rural LECS

By: 

Leah S. Stephens, Esq.

Mark D. Wilkerson, Esq.

Wilkerson & Bryan, P.C.
405 South Hull Street
Montgomery, AL 36104
334/265-1500

May 28, 2004

CERTIFICATE OF SERVICE

I, Leah S. Stephens, hereby certify that on this 28th day of May, 2004, a true and correct copy of the above and foregoing COMMENTS OF THE ALABAMA RURAL LOCAL EXCHANGE CARRIERS TO THE SUPPLEMENT OF RCC HOLDINGS, INC., unless otherwise designated, have been forwarded by U.S. Mail, first class, postage prepaid and properly addressed to:

Sheryl Todd (3 copies)*
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
9300 East Hampton Dr., Room 5-B540
Capitol Heights, MD 20743

Qualex International (diskette)*
Portals II
9300 East Hampton Dr., Room CY-B402
Capitol Heights, MD 20743

Thomas Buckley, Attorney Advisor**
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W., Room 5-A660
Washington, DC 20554

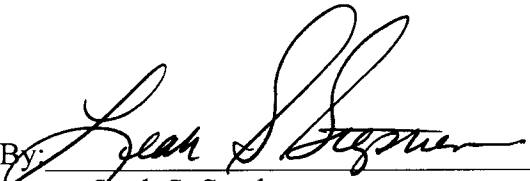
Mr. Walter Thomas, Jr., Secretary
Mary E. Newmeyer,
Federal Affairs Advisor
Alabama Public Service Commission
RSA Union Building
P.O. Box 304260
Montgomery, Alabama 36101

David L. Nace, Esq.
David A. LaFuria, Esq.
Allison M. Jones, Esq.
Lukas, Nace, Gutierrez & Sachs, Chartered
1111 19th Street, N.W., Suite 1200
Washington, DC 20036

John F. Jones
Vice President, Federal Government
Relations
CENTURYTEL, INC.
100 Century Park Drive
Monroe, Louisiana 71203

William W. Jordan
Vice-President – Federal Regulatory
BellSouth Telecom, Inc.
1133 21st Street, Suite 900
Washington, D.C. 20036

Karen Brinkmann
LATHAM & WATKINS, LLP
Suite 1000
555 Eleventh Street, N.W.
Washington, D.C. 20004-1304

By: 
Leah S. Stephens
One of the Attorneys for the
Alabama Rural LECs

***via overnight delivery**
***via U.S. Mail and E-mail**

Exhibit “A”

LEC Supplement

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Federal-State Joint Board)	
On Universal Service)	CC Docket No. 96-45
)	
RCC Holdings, Inc.)	
)	
Petition for Designation as an)	
Eligible Telecommunications Carrier)	
Throughout its Licensed Service Area)	
In the State of Alabama)	

**SUPPLEMENT TO THE APPLICATION FOR REVIEW OF THE
ALABAMA RURAL LOCAL EXCHANGE CARRIERS
("Alabama Rural LECs")**

To: The Commission

Leah S. Stephens
Mark D. Wilkerson
Wilkerson & Bryan, P.C.
405 South Hull Street
Montgomery, Alabama 36104
(334) 265-1500
Its Counsel

Alabama Rural LECs:
Ardmore Telephone Company
Blountsville Telephone Company
Brindlee Mountain Telephone Company, Inc.
Butler Telephone Company, Inc.
Castleberry Telephone Company, Inc.
Frontier Communications of Alabama, Inc.
Frontier Communications of Lamar County, Inc.
Frontier Communications of the South, Inc.
Graceba Total Communications, Inc.
GTC, Inc.
Gulf Telephone Company
Hayneville Telephone Company, Inc.
Hopper Telecommunications Company, Inc.
Interstate Telephone Company
Millry Telephone Company, Inc.
Mon-Cre Telephone Cooperative, Inc.
Moundville Telephone Company, Inc.
National Telephone Company, Inc.
New Hope Telephone Cooperative, Inc.
Oakman Telephone Company
OTELCO Telephone LLC
Peoples Telephone Company
Ragland Telephone Company
Roanoke Telephone Company, Inc.
Union Springs Telephone Company, Inc.
Valley Telephone Company

May 14, 2004

TABLE OF CONTENTS

SUMMARY	iii
SUPPLEMENT	1
I. IMPORTANT ETC DESIGNATION ISSUES REMAIN UNRESOLVED	2
II. FAILURE TO SET ASIDE THE RCC ORDER WOULD HAVE A SIGNIFICANT OVERALL IMPACT ON THE UNIVERSAL SERVICE FUND	6
III. RCC DOES NOT MEET THE PUBLIC INTEREST CRITERIA SET FORTH IN <i>VIRGINIA CELLULAR</i>	8
IV. DESIGNATING RCC AS AN ETC IN A PORTION OF A RURAL TELEPHONE COMPANY'S WIRE CENTER IS NOT IN THE PUBLIC INTEREST	13
CONCLUSION.....	13

SUMMARY

The *RCC Order* must be set aside until the Commission has resolved outstanding ETC designation issues – including critical issues affecting the Universal Service Fund, raised in the pending *Recommended Decision* of the Federal-State Joint Board on Universal Service.

Consistent with its announced intent to use the more stringent public interest analysis set forth in *Virginia Cellular* until the ETC designation issues raised in the *Recommended Decision* could be resolved, the Commission issued its ruling in *Highland Cellular*. Both rulings, however, failed to consider the most critical issue articulated by the Alabama Rural LECs in the *RCC Application for Review*: the sustainability of the USF – and its underlying goals – where multiple providers, with overlapping territories, apply for ETC status in a rural area. Thus, the Commission should set aside the *RCC Order* until it has developed a framework for analyzing the overall impact on the Fund from increasing support payments to competitive ETCs.

If, however, the Commission should address the pending *Application for Review* in light of *Virginia Cellular*, RCC fails to meet its more rigorous requirements. Additionally, *Highland Cellular* dictates that RCC's ETC designation for only a portion of Interstate Telephone Company's Shawmut wire center and Mon-Cre Telephone Cooperative, Inc.'s Lapine wire center be overturned.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
RCC Holdings, Inc.)	
)	
Petition for Designation as)	
Eligible Telecommunications Carrier)	
Throughout its Licensed Service Area)	
in the State of Alabama)	

**SUPPLEMENT TO
APPLICATION FOR REVIEW**

The Alabama Rural Local Exchange Carriers ("Alabama Rural LECs")¹ submit this Supplement ("*Supplement*") to their Application for Review filed on December 23, 2002 ("*Application for Review*") in accordance with the Commission's Public Notice released April 12, 2004, DA 04-999. The Alabama Rural LECs filed said *Application for Review* following the Wireline Competition Bureau's grant of the petition of RCC Holdings, Inc. ("RCC") for designation as an eligible telecommunications carrier ("ETC") entitled to receive universal service support in certain rural and non-rural areas of Alabama on November 27, 2002.²

¹Castleberry Telephone Company, Inc. joins in this filing. See *Application for Review* at p. 1. National Telephone Company, Inc., not previously listed as a part of the Alabama Rural LECs, also supports and adopts the group's prior positions and more specifically joins in and supports this *Supplement*.

²*RCC Holdings, Inc., Petition for Designation as an Eligible Telecommunications Carrier throughout its Licensed Service Area in the State of Alabama* ("RCC Petition"), CC Docket No. 96-45, Memorandum Opinion and Order, 17 FCC Rcd 23532 ("*RCC Order*").

The *RCC Order* must be set aside until the Commission has resolved the outstanding ETC designation issues raised in the pending Recommended Decision of the Federal-State Joint Board on Universal Service (“Joint Board”).³ As previously articulated by the Alabama Rural LECs, these proceedings will have a significant overall impact on the Universal Service Fund (“USF” or the “Fund”).⁴ Until the broader issues affecting the USF are resolved, RCC’s ETC designation cannot stand. If, however, the Commission should address the pending *Application for Review* in light of *Virginia Cellular*⁵, RCC fails to meet its heightened requirements. Finally, RCC’s ETC designation for only a portion of Interstate Telephone Company’s Shawmut wire center and Mon-Cre Telephone Cooperative, Inc.’s Lapine wire center cannot stand.

I. IMPORTANT ETC DESIGNATION ISSUES REMAIN UNRESOLVED

In their *Application for Review*, the Alabama Rural LECs argued that “important policy considerations relating to the funding of multiple ETCs and multiple lines have been referred to the Joint Board”⁶ and that pending full Commission review, further action on ETC petitions would be premature.⁷ Following the issuance of the Commission’s *Joint Board Referral*⁸ and the

³ Recommended Decision, *Federal-State Joint Board on Universal Service Seeks Comment on Certain of The Commission’s Rules Relating to High-Cost Universal Support and The ETC Designation Process*, CC Docket No. 96-45, FCC 04J-1 (rel. Feb. 27, 2004) (“*Recommended Decision*”).

⁴ See e.g. *Application for Review* at p. 2 and 13-16.

⁵ *In re Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, FCC 03-338 (rel. Jan. 22, 2004) (“*Virginia Cellular*”).

⁶ *Application for Review* at p. 9.

⁷ *Application for Review* at p. 11.

⁸ *Federal-State Joint Board on Universal Service*, Order, CC Docket No. 96-45, 17 FCC Rcd 22642 (2002) (“*Joint Board Referral*”).

filing by the Alabama Rural LECs of their *Application for Review*, the Joint Board sought comments on the rules relating to high-cost universal service support and the ETC designation process.⁹ As a result, interested parties submitted comments to the Joint Board that raise issues and concerns for the Commission to review when evaluating petitions for ETC designation, particularly in rural areas. While the Joint Board has since issued its *Recommended Decision* in the matter – noting that ETC designations in areas served by rural carriers are entitled to “rigorous review”¹⁰, the Commission has not yet acted on the Joint Board’s recommendations. Hence, important ETC designation issues remain unresolved.

While awaiting the *Recommended Decision*, the Commission granted a pending application for ETC designation in *Virginia Cellular* and stated that “the framework enunciated in this Order shall apply to all ETC designations for rural areas pending further action by the Commission.”¹¹ This standard was intended to provide a more stringent public interest analysis while “await[ing] a recommended decision from the Joint Board”.¹²

In keeping with its announced intent to apply *Virginia Cellular* until resolution of the ETC designation issues raised in the *Recommended Decision*, the Commission issued *Highland*

⁹ *Federal-State Joint Board on Universal Service Seeks Comment on Certain of The Commission’s Rules Relating to High-Cost Universal Service Support and The ETC Designation Process*, Public Notice, CC Docket No. 96-45, 18 FCC Rcd 1941 (Jt. Bd. 2003) (“*High Cost/ETC Public Notice*”).

¹⁰ See *Recommended Decision* at ¶ 17.

¹¹ See *Virginia Cellular* at ¶ 4.

¹² *Id.*

*Cellular*¹³. However, in neither *Virginia Cellular* or *Highland Cellular* did the Commission reach a pivotal issue articulated by the Alabama Rural LECs in the *RCC Application for Review*: the sustainability of the USF – and its underlying goals – where multiple providers, with overlapping territories, apply for ETC status in a rural area.¹⁴

Finding “that grant of *this ETC designation* will not dramatically burden the universal service fund,” the Commission did not address this issue of “overall impact” of ETC designations on the Fund in *Virginia Cellular*.¹⁵ Instead, the Commission in *Virginia Cellular* expressed its “hope that the Commission’s pending rulemaking proceeding also will provide a framework for assessing the *overall impact* of competitive ETC designations on the universal service mechanisms.”¹⁶ Correctly, neither the full Joint Board nor the federal Commissioners on the Joint Board have ignored the potential explosion in the USF.¹⁷

The Alabama Rural LECs agree with the Comments of TDS Telecom on the pending Alabama ETC Petition of Nextel Partners: “Given the issue[s] left open in *Virginia Cellular* and

¹³ *Federal-State Joint Board on Universal Service Highland Cellular, Inc Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, FCC 04-37 (rel. April 12, 2004) (“*Highland Cellular*”).

¹⁴ See *Application for Review* at p. 14 –16 (noting that “[t]he Alabama ETC cases, RCC and Cellular South, have drawn particular attention since these companies have significant overlap in the territory that they serve.”).

¹⁵ See *Virginia Cellular* at ¶ 31 (emphasis added).

¹⁶ *Id.* (emphasis added).

¹⁷ See *Recommended Decision* at ¶ 67 (noting in footnote numbered 53 that the Joint Board’s “examination of the record reveals a potential for uncontrolled growth [of the USF] as more and more competitive ETCs are designated in rural and high-cost areas.”); Separate Statement of Commissioner Kathleen Q. Abernathy (“[I]t seems clear that the universal service fund can no longer subsidize an unlimited number of connections provided by an unlimited number of carriers.”); Separate Statement of Commissioner Kevin J. Martin, Dissenting in Part, Concurring in Part (“I concur in the Joint Board’s recommendation to seek alternative means of limiting fund growth.”); Joint Separate Statement of Commissioners Jonathan S. Adelstein, et al. (“There are other better means to control fund growth” than the primary line proposal.).

Highland Cellular, it is not appropriate for the Commission to evaluate *all* pending ETC petitions under the public interest standard set forth in *Virginia Cellular*.”¹⁸ The *RCC Order* implicates issues quite unlike those addressed by the Commission in *Virginia Cellular* and *Highland Cellular*. The petition for ETC designation granted in the *RCC Order* is only one of many proceedings for ETC designation in Alabama (the “Alabama Petitions”).¹⁹ If these Alabama Petitions were all granted after being reviewed in isolation from each other, at least one rural carrier in Alabama would face as many as five competitive ETCs (“CETC”s) operating in its service area, others two, three or four.²⁰ This would clearly be unsustainable in areas where the economies of scale may not support any competition at all. Accordingly, the Commission cannot properly assess whether the public interest was (or would be) served by granting the *RCC Order* (or the *CellSouth Order* and other pending Alabama Petitions) until the Commission has finalized “a framework for assessing the overall impact of competitive ETC designations on the universal service mechanisms.”²¹ The *RCC Order* must be set aside.

¹⁸ Comments of TDS Telecom in response to the *Supplement to Petition for ETC Designation in the State of Alabama of NPCR, Inc., d/b/a Nextel Partners* (“Nextel”) CC Docket No. 96-45 at p. 4 (filed May 7, 2004) (“TDS Comments”).

¹⁹ *RCC Order*; *Cellular South License, Inc., Petition for Designation as an Eligible Telecommunications Carrier throughout its Licensed Service Area in the State of Alabama* (“*CellSouth Petition*”), Memorandum Opinion and Order, 17 FCC Rcd 24393 (“*CellSouth Order*”); *ALLTEL Communications, Inc.* (“ALLTEL”), *Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama*, (April 14, 2003) (“*ALLTEL Petition*”); *AT&T Wireless Services, Inc.* (“AT&T Wireless”) *Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama*, (Dec. 31, 2003) (“*AT&T Wireless Petition*”) as supplemented (May 11, 2004); *Corr Wireless Communications, LLC, Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama*, (May 13, 2003) (“*Corr Petition*”); *Nextel Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama*, (April 4, 2003) (“*Nextel Petition*”) as supplemented (March 24, 2004).

²⁰ See *infra* at p. 6-8 (discussing ETC Petition overlap in Alabama).

²¹ See *Virginia Cellular* at ¶ 31.

II. FAILURE TO SET ASIDE THE RCC ORDER WOULD HAVE A SIGNIFICANT OVERALL IMPACT ON THE UNIVERSAL SERVICE FUND

As stated, RCC is not the only CMRS provider seeking ETC designation in rural Alabama. There are five other ETC designation proceedings pending with the Commission, all affecting Alabama Rural LECs.²² Three ETC designation petitions involve large CMRS providers – ALLTEL, AT&T Wireless and Nextel. If, in addition to the *RCC* and *Cell South Orders*, each of those petitions (along with the *Corr Wireless Petition*) were granted, the resulting CETCs in Alabama could draw millions of dollars annually from the USF.²³ When viewed in this context, not only must the *RCC Order* (and *CellSouth Order*) be set aside, but a suspension of any further ETC grants in Alabama is also mandated, pending resolution of the issues outlined in the *Recommended Decision*.

If the *RCC Order* is allowed to stand, the Commission will be signaling its approval for an endless number of wireless ETC applications – and ultimately designations, to issue in overlapping rural service territories without first resolving the significant impact that such multiple designations will have on the Fund and on the underlying goals of the Fund. In *Virginia* and *Highland Cellular* the Commission could determine with some degree of confidence that the grant of ETC status in *those specific instances* would not dramatically burden the Fund. That is not the case in Alabama.

²² *CellSouth Order*; *ALLTEL Petition*; *AT&T Wireless Petition*; *Corr Petition*; *Nextel Petition*.

²³ Nextel alone expects to draw approximately \$700,000 annually from the USF based on its Alabama petition. See Nextel's Alabama Supplement to *Nextel Petition* at p. 5, footnote numbered 14 (Mar. 24, 2004). Conservatively estimating that AT&T Wireless and ALLTEL combined will draw another \$1M from the Fund as a result of their Alabama filings and then adding three more Alabama ETCs to the pool, annual draws of over \$2M from the Fund for the state of Alabama alone would be virtually assured.

Simply put, the existence of six ETC proceedings – two granted and four pending, in Alabama deserves considerable attention. Each one should not be viewed in isolation. The Commission should set aside the *RCC Order* (and *CellSouth Order*) and defer decision on all other pending Alabama ETC Petitions until it issues a final rule establishing a framework for determining the “overall impact” on the Fund that overlapping ETC petitions will have on its sustainability and purpose. If the Commission evaluates pending petitions in isolation before resolving the issue of whether the number of competitive ETCs (“CETCs”) in each rural area should be capped, this could accelerate the growth of (and ultimately destabilize) the Fund. Significantly, it could also undermine the paramount goal of the Fund – supporting and promoting truly “universal service” – in the name of promoting competition in areas where the economies of scale may not support or justify competitive entry.²⁴

As previously stated, there are six ETC proceedings (two granted and four pending) in Alabama. Of the Alabama Rural LECs, the following have at least two potential CETCs in some or all of their service areas: Graceba Total Communications, Inc., GTC, Inc., Moundville Telephone Company, Inc., and Union Springs Telephone Company, Inc.²⁵ These carriers have three or four: Castleberry Telephone Company, Inc., Frontier of Alabama, Inc., Frontier of Lamar County, Inc., Frontier of the South, Inc., Gulf Telephone Company, Inc., Hayneville

²⁴ See *Recommended Decision*, Separate Statement of Commissioner Kevin J. Martin, Dissenting in Part, Concurring in Part (“I have concerns with policies that use universal service support as a means of creating ‘competition’ in high cost areas. ... I remain hesitant to subsidize multiple competitors to serve areas in which costs are prohibitively expensive for even one carrier”).

²⁵ These numbers have been compiled by reviewing the *RCC Petition*, *AT&T Wireless Petition*, *ALLTEL Petition*, *Corr Petition*, *Nextel Petition* and *CellSouth Petition*.

Telephone Company, Inc., Millry Telephone Company, Inc. and Mon-Cre Telephone Cooperative, Inc.²⁶ Finally, Butler Telephone Company, Inc. has five.²⁷ The *RCC Order* must be examined in the context of all pending ETC requests for the state of Alabama. “Where the economies of scale in a study area do not support multiple competitive entrants, a petitioner for ETC designation should face a particularly high public interest hurdle before the Commission can grant an additional CETC designation.”²⁸ Simply, the *RCC Order* must be set aside pending the Commission’s resolution of the “overall impact” issue. The remaining Alabama Petitions (and *CellSouth Order*) highlight this need.

III. RCC DOES NOT MEET THE PUBLIC INTEREST CRITERIA SET FORTH IN VIRGINIA CELLULAR

If the Commission, however, undertakes to evaluate the underlying *Application for Review* on its merits, it must revisit RCC’s ETC request under the public interest framework enunciated in *Virginia Cellular*, “weigh[ing] the benefits of increased competitive choice, the impact of the designation on the universal service fund, the unique advantages and disadvantages of the competitor’s service offering, any commitments made regarding quality of telephone service, and the competitive ETC’s ability to satisfy its obligation to serve the designated service areas within a reasonable time frame.”²⁹ The claims made in RCC’s filings simply do not survive the more stringent public interest analysis now embraced by the Commission.

²⁶ *Id.*

²⁷ *Id.*

²⁸ TDS Comments at p. 10.

²⁹ *Virginia Cellular* at ¶ 28; *see also Highland Cellular* at ¶ 22.

While RCC repeatedly relied on the presumptive benefits of “competition and consumer benefit”³⁰ to support its contention that the public interest would be served by its ETC designation in certain rural service areas in Alabama, it did not, however, provide the kinds of firm commitments required under *Virginia Cellular* and *Highland Cellular*. RCC made no build-out or quality of services assurances in the nature of those made by Virginia Cellular or Highland Cellular. Moreover, RCC was and is competing for and winning customer lines without the benefit of high-cost support. Thus, efficiency gains inspired by long-term competition have happened without the costs associated with the designation of additional ETCs.³¹

While RCC stated that it “will implement ... E-911 services in compliance with all state and federal requirements”³², this does not rise to the level of commitment provided by Virginia Cellular. Virginia Cellular stated that “it is in compliance with state and federal 911 and E-911 mandates and is upgrading from analog to digital technology”, “it is implementing Phase I E-911 services in those areas where local governments have developed E-911 functionality” and “that upon designation as an ETC, it will be able to effectively implement E-911.”³³ RCC did not make similar representations.

³⁰ *RCC Petition* at p. 15.

³¹ See CC Docket No. 96-45, *RCC Petition*, Alabama Rural LECs *ex parte* (October 2, 2002).

³² *RCC Petition* at p. 15.

³³ See *Virginia Cellular* at ¶ 19.

RCC stated that it “believes” that “its local calling area will be substantially larger [than the incumbent’s]”³⁴ and that it “will implement a variety of service offerings and rate plans that will be competitive with incumbent service offerings.”³⁵ Unlike Virginia Cellular, RCC did not assert that its “current rate plans include access to the local exchange network” or that it had “many plans [that] include a large volume of minutes.”³⁶

RCC fails to meet the more stringent public interest analysis in other areas. While RCC committed to using USF High Cost support to upgrade its network facilities for rural areas, RCC did not provide a firm commitment to serve sparsely populated areas. RCC provided no assurance of quality service to all portions of the designated study area. In addition, while RCC stated that it “will advertise the availability of the supported services and the corresponding charges in a manner that fully informs the general public”³⁷ it did not make specific commitments to advertise USF-supported services in the same fashion that it advertises services not supported by the USF. Similarly, RCC provided no real description of how it plans to advertise the availability and terms and conditions of Lifeline and Linkup services. In sum, RCC failed to concretely identify how it intends to alter its current construction, service or marketing plans to enable it to provide “universal service” in the rural service area[s] in which it seeks ETC designation.

³⁴ *RCC Petition* at p. 15.

³⁵ *Id.*

³⁶ *See Virginia Cellular* at ¶ 20.

³⁷ *RCC Petition* at p. 8.

“[T]he value of increased competition, by itself, is not sufficient to satisfy the public interest test in rural areas.”³⁸ Instead, the Commission balances the benefits and costs of ETC designation in a fact-specific exercise.³⁹ To date, RCC has not addressed the impact of the multiplicity of pending ETC Petitions in Alabama on the USF, a specific component of the more stringent public interest analysis.⁴⁰ The purported benefits of RCC’s ETC designation must be weighed against very real costs associated with introducing multiple carriers in sparsely populated areas such as the ones affected by the *RCC Order*.

The Alabama Rural LECs have submitted data from the 2000 census indicating that in many of the rural studies areas for which RCC seeks ETC status the population density is very low.⁴¹ The Commission has recognized that low population density typically indicates high-cost.⁴² Similarly, the Alabama Rural LECs have previously stated that the cost of building and maintaining a public telephone network is extremely sensitive to the density of the serving area, establishing that costs increase gradually with decreasing population density until around 100 households per square mile.⁴³ Below this level, costs increase geometrically as subscriber density decreases.⁴⁴

³⁸ See *Virginia Cellular* at ¶ 4.

³⁹ *Id.* at ¶ 28; see also *Highland Cellular* at ¶ 22.

⁴⁰ See *Virginia Cellular* at ¶ 4.

⁴¹ See CC Docket No. 96-45, *RCC Petition and CellSouth Petition*, Alabama Rural LECs *ex parte* (Sept. 5, 2002).

⁴² *Virginia Cellular* at ¶ 34.

⁴³ See CC Docket 96-45, *RCC Petition and CellSouth Petition*, Alabama Rural LECs *ex partes* (Sept. 5 and Oct. 2, 2002).

⁴⁴ *Id.*

When two, three, four or even five CETCs serve the same territory, the average subscriber density for each carrier will be less than if a single company served the same territory. This will have the impact of significantly increasing each carrier's average cost of serving all subscribers. The impact of this increase will be more dramatic where a high percentage of lines in the study area are in the two lowest density/highest cost zones. The following data, previously submitted by the Alabama Rural LECs, shows that three of the rural carriers within the scope of RCC's designated service area have a significant majority of their customers located in these lowest two density zones:

Household Density⁴⁵

Study Area Name	Loops	% 0 to 5 HH/sq mile	% 5 to 100 HH/sq mile	% over 100 HH/sq mile	Average Study Area Density (HH/sq mi)
Butler Telephone Company	8,771	9.5%	61.5%	29.0%	10.2
Frontier Communications – AL	14,341	13.0%	46.5%	40.5%	8.8
Millry Telephone Company	7,127	17.5%	71.5%	11.0%	6.8

The overall impact of all the Alabama Petitions (pending and granted) may be the creation of a “great disparity in density”⁴⁶ between the wire centers sought to be served and the ones left unserved by Alabama CETCs. If this is the case, an affected Alabama Rural LEC could be placed at a “sizeable unfair competitive disadvantage.”⁴⁷ Multiple CMRS service offerings could have an overall effect of taking funding away from an Alabama Rural LEC if the

⁴⁵ Source: 2000 Census – Density at the Census Block Level.

⁴⁶ *Virginia Cellular* at ¶ 35.

⁴⁷ *Id.*

combined CETCs primarily serve the more highly concentrated population centers within the study area, while more remote areas are still served by the LEC alone. This ultimately leaves the LEC to serve higher cost areas with less USF funding and could also delay the deployment of advanced services throughout the study area.

In summary, RCC has not demonstrated that the purported benefits of providing USF support to its competitive CMRS service offering outweighs these harms. Failure to set aside the *RCC Order* could dilute the USF funding available to the affected Alabama Rural LECs and make it more difficult for individual companies to maintain the network necessary to serve their entire service area.

IV. DESIGNATING RCC AS AN ETC IN A PORTION OF A RURAL TELEPHONE COMPANY'S WIRE CENTER IS NOT IN THE PUBLIC INTEREST

In *Highland Cellular* the Commission concluded that designating an ETC for only a portion of a rural telephone company's wire center was "inconsistent with the public interest".⁴⁸ In fact, the Commission cited the *RCC Order*.⁴⁹ Thus, *Highland Cellular* mandates that RCC's ETC designation for only a portion of Interstate Telephone Company's Shawmut wire center and Mon-Cre Telephone Cooperative, Inc.'s Lapine wire center be overturned.

CONCLUSION

Because the *RCC Order* when viewed in the total context of the ETC picture in Alabama, would have a significant *overall* impact on the Universal Service Fund, the Commission should set aside the *RCC Order* until it has developed a framework for analyzing the overall impact on

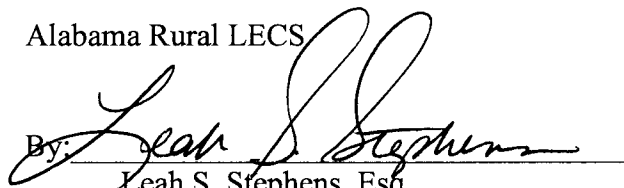
⁴⁸ *Highland Cellular* at ¶ 33.

⁴⁹ *Id.*

the Fund from increasing support payments to competitive ETCs. Finally, RCC did not make a sufficient showing that the public interest would be served by its designation as an ETC in the state of Alabama. Moreover, RCC's ETC designation for only a portion of the Lapine wire center of Mon-Cre Telephone Cooperative, Inc. and a portion of the Shawmut wire center of Interstate Telephone Company is prohibited.

Respectfully submitted,

Alabama Rural LECS

By: 
Leah S. Stephens, Esq.
Mark D. Wilkerson, Esq.

Wilkerson & Bryan, P.C.
405 South Hull Street
Montgomery, AL 36104
334/265-1500

May 14, 2004

CERTIFICATE OF SERVICE

I, Leah S. Stephens, hereby certify that on this 14th day of May, 2004, a true and correct copy of the above and foregoing SUPPLEMENT TO THE APPLICATION OF REVIEW OF THE ALABAMA RURAL LOCAL EXCHANGE CARRIERS, unless otherwise designated, have been forwarded by U.S. Mail, first class, postage prepaid and properly addressed to:

Sheryl Todd (3 copies)*
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
9300 East Hampton Dr., Room 5-B540
Capitol Heights, MD 20743

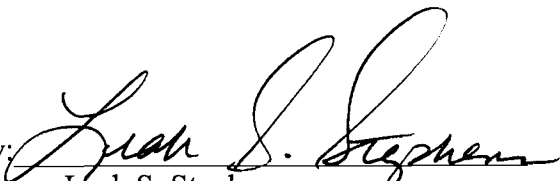
Karen Brinkmann
LATHAM & WATKINS, LLP
Suite 1000
555 Eleventh Street, N.W.
Washington, D.C. 20004-1304

Qualex International (diskette)*
Portals II
9300 East Hampton Dr., Room CY-B402
Capitol Heights, MD 20743

Mr. Walter Thomas, Jr., Secretary
Mary E. Newmeyer,
Federal Affairs Advisor
Alabama Public Service Commission
RSA Union Building
P.O. Box 304260
Montgomery, Alabama 36101

David L. Nace, Esq.
David A. LaFuria, Esq.
Allison M. Jones, Esq.
Lukas, Nace, Gutierrez & Sachs, Chartered
1111 19th Street, N.W., Suite 1200
Washington, DC 20036

John F. Jones
Vice President, Federal Government
Relations
CENTURYTEL, INC.
100 Century Park Drive
Monroe, Louisiana 71203

By: 
Leah S. Stephens
One of the Attorneys for the
Alabama Rural LECs

***via overnight delivery**

**Federal Communications Commission**

**The FCC Acknowledges Receipt of Comments From ...
Alabama Rural Local Exchange Carriers
...and Thank You for Your Comments**

Your Confirmation Number is: '2004514051985 '

Date Received: May 14 2004

Docket: 96-45

Number of Files Transmitted: 1

DISCLOSURE

This confirmation verifies that ECFS has received and accepted your filing. However, your filing will be rejected by ECFS if it contains macros, passwords, redlining, read-only formatting, a virus or automated links to source documents that is not included with your filing.

Filers are encouraged to retrieve and view their filing within 24 hours of receipt of this confirmation. For any problems contact the Help Desk at 202-418-0193.

[Initiate a Submission](#) | [Search ECFS](#) | [Return to ECFS Home Page](#)

[FCC Home Page](#)

[Search](#)

[Commissioners](#)

[Bureaus/Offices](#)

[Finding Info](#)

updated 02/11/02